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Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of)	MM DOCKET NO. 86-440
)	
Achernar Broadcasting Company)	File No. BPCT-860410KP
)	
Lindsay Television)	File No. BPCT-860410KQ
)	
For Construction Permit)	
For A New TV Station on Channel 64)	
At Charlottesville, Virginia)	

ORDER**Adopted: October 23, 2000;****Released: October 25, 2000**

By the Commission:

1. This Order dismisses on procedural grounds a pleading filed May 26, 2000 by Givens & Bell, a division of Blue Ridge Video Services (Givens & Bell),¹ that effectively seeks reconsideration of *Achernar Broadcasting Company*, 15 FCC Rcd 7808 (2000), awarding Charlottesville Broadcasting Corporation (CBC) a construction permit for a new analog television station on channel 64, as modified to specify operation on channel 19, and terminating the above-captioned adjudicatory proceeding.

2. The above-captioned applications for channel 64 (Charlottesville, Virginia) filed by Achernar Broadcasting Company and Lindsay Television were

¹ The pleading is entitled "Opposition to, Protest of, and Petitions of the Givens & Bell Division of Blue Ridge Video Services Regarding the Grant of the Joint Petition for Approval of Settlement Agreement, the Grant of Leave to Amend Application, and the Grant of the Construction Permit filed January 30, 1998 by Achernar Broadcasting Company and Lindsay Television, Inc., Including A Petition to Recall and Remand the Construction Permit, filed January 30, 1998 by Achernar Broadcasting Company and Lindsay Television, Inc. and its Modification Amendment for Further Engineering Study, and a Joint and Separate Petition to Permanently Dismiss the Construction Permit filed January 30, 1998 by Achernar Broadcasting Company and Lindsay Television, Inc. and its Modification, for Lack of Technical Merit and a Joint and Separate Petition for the Commission to Immediately Grant the March 13, 2000 Multiple Action Petition of Givens & Bell, Which Was Submitted in Response to Public Notice, DA 99-2605, Accept [File No.] BPCT-961023KF for Filing, and Specify a Period of Time for Givens & Bell to Submit an Amendment."

designated for hearing in 1986, along with three other mutually exclusive applications that were subsequently dismissed.² On April 19, 2000 we approved a settlement agreement awarding the construction permit to CBC, an entity jointly owned by Achernar and Lindsay, thereby expediting the inauguration of new analog television service to the community of Charlottesville. In a pleading filed on May 26, 2000, Givens & Bell urges that we recall CBC's construction permit and remand it for further engineering study.³ The Enforcement Bureau urges that Givens & Bell's pleading is procedurally defective and, in any event, that its insignificant, unsubstantiated allegations are not a basis for granting reconsideration. Givens & Bell's pleading is also opposed by Achernar and Lindsay.

3. We will dismiss the pleading filed by Givens & Bell protesting the award of a construction permit to CBC. Although entitled an "Opposition," the pleading in question effectively seeks reconsideration of our April 19, 2000 action. As the Enforcement Bureau notes, however, Givens & Bell is not a party to this proceeding and it has not, as required by Section 1.106(b)(1) of the Commission's Rules, stated with particularity how its interests are adversely affected by our action awarding CBC a construction permit or explained why it was unable to participate in an earlier stage of this adjudicatory proceeding. Givens & Bell's pleading is premised on its asserted submission in September 1996 of an application for channel 64 that is allegedly technically superior to, and prior in time to, the January 1998 settlement agreement filed by Achernar and Lindsay. But that tendered application, as the Bureau correctly submits, was defective⁴ and, as such, it affords Givens & Bell no claim to channel 64 or standing to object to the grant of a construction permit in this proceeding.⁵ Indeed, even if we were to rescind CBC's construction permit for any reason, we would not permit Givens & Bell to resubmit that application or to take advantage of the procedures established for pending applications for new analog television stations on channels 60-69.⁶

² *Christopher Gault*, 1 FCC Rcd 732 (1986).

³ The following responsive pleadings have been filed: (a) Opposition to the Filing of Givens & Bell, filed June 7, 2000, by Achernar Broadcasting Company and Lindsay Television Company; (b) Petitioner's Reply to Filing of Charlottesville Broadcasting Corporation, filed June 13, 2000, by Givens & Bell; (c) Enforcement Bureau's Opposition to Pleading filed by Givens & Bell, filed June 14, 2000; and (d) Reply to Enforcement Bureau's Opposition to Pleading, filed June 21, 2000, by Givens & Bell.

⁴ The Bureau relies on Sections 73.3564(a)-(c), 73.3566(a), and 73.3572(f) of the Commission's Rules, 47 C.F.R. §§ 73.3564(a)-(c), 73.3566(a), and 73.3572(f), as they existed in September 1996 when Givens & Bell's application was tendered for filing. Read together, those provisions make clear that Givens & Bell's September 1996 application was not entitled to competitive consideration with the 1986 applications of Achernar and Lindsay for that same channel, and should have been dismissed.

⁵ Givens & Bell relies on the fact that its application, initially returned for the submission of omitted information, was ultimately accepted by the staff. Such staff action, however, does not preclude the dismissal of an application later found to be patently not in accordance with the Commission's rules. 47 C.F.R. § 73.3564(b).

⁶ Pursuant to Section 337 of the Communications Act, 47 U.S.C. § 337, the Commission has reallocated channel 64 exclusively for public safety use. *Reallocation of Television Channels 60-69*, 12 FCC Rcd 22953 (1998), *reconsideration denied*, 13 FCC Rcd 21578 (1998). On November 22, 1999, the Mass

4. In this regard, Givens & Bell claims to have timely tendered an application for filing in accordance with the procedures regarding vacant NTSC allotments set forth in *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service (Sixth Further Notice)*, 11 FCC Rcd 10968, 10991-92 ¶¶ 58-60 (1996). As the Enforcement Bureau notes, however, Givens & Bell is not now, and never has been, a valid applicant for the channel 64 allotment at Charlottesville. Contrary to Givens & Bell's understanding, the Commission's 1991 denial of Achnar's and Lindsay's applications never became final,⁷ but was reversed by the United States Court of Appeals for the District of Columbia Circuit in 1995.⁸ Both applications, having then been remanded to the Commission for further consideration, were still pending in 1996. Due to the pendency since 1986 of those applications, in other words, the channel 64 allotment at Charlottesville was not then vacant within the meaning of the *Sixth Further Notice* and no provision of the Communications Act or the Commission's Rules authorized the filing of any additional competing application. Because Givens & Bell's defective 1996 filing is not entitled to further consideration, it has not alleged any interest that was adversely affected by our grant of a construction permit to CBC. Its arguments thus warrant no further consideration.

5. ACCORDINGLY, IT IS ORDERED, That, pursuant to 47 C.F.R. § 1.106, the pleading filed May 26, 2000 by Givens & Bell, a division of Blue Ridge Video Services, IS DISMISSED.

6. IT IS FURTHER ORDERED, That the Mass Media Bureau IS DIRECTED to handle in accordance with its usual procedures and consistent with this

Media Bureau announced a Window Filing Opportunity affording applicants with pending applications for new full-service NTSC television stations an opportunity to file a petition for rulemaking seeking a new channel below channel 60. *Public Notice: Mass Media Bureau Announces Window Filing Opportunity For Certain Pending Applications and Allotment Petitions for New Analog Television Stations*, 14 FCC Rcd 19559 (MMB 1999). In response, Givens & Bell filed a Petition for Rulemaking to allot channel 19 to Charlottesville on March 13, 2000. Based upon the defective status of Givens & Bell's 1996 tendered application (and freeze waiver request) for the channel 64 allotment at Charlottesville, the Enforcement Bureau properly submits that the petition for rulemaking should be dismissed.

⁷ Givens & Bell relies on the subsequent omission of channel 64 (Charlottesville) from the digital television table as evidence that Lindsay's and Achnar's applications were not still pending before the Commission when it tendered its channel 64 application in 1996. There is no merit to that contention, however. Channel 64 was omitted from the Table (and CBC was ultimately ineligible for an initial paired digital license), because Achnar's and Lindsay's applications had not been granted by April 3, 1997. *See* 47 U.S.C. § 336, limiting *initial* eligibility to those holding a permit or a license on the date that the first digital television license is granted. Pending applicants granted a construction permit after that date, although ineligible for the paired license, have nevertheless been afforded choices enabling them to participate, where technically feasible, in the conversion to digital television. *See generally, Advanced Television System and Their Impact upon the Existing Television Broadcast Service (Second Memorandum Opinion and Order of the Fifth and Sixth Report and Orders)*, 14 FCC Rcd 1348, 1352-60 ¶¶ 9-27 (1998).

⁸ *Achnar Broadcasting Company v. FCC*, 62 F.3d 1441 (D.C. Cir. 1995), *vacating*, *Achnar Broadcasting Company*, 6 FCC Rcd 5393 (1991), *reconsideration denied*, 7 FCC Rcd 1773 (1992).

Order the above-described channel 64 application (File No. BPCT-961023KF), tendered for filing by Givens & Bell, and any related filings.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "Magalie Roman Salas".

Magalie Roman Salas
Secretary